Supreme Court of the United States

October Term, 1949

No. 438

ORDER OF RAILWAY CONDUCTORS OF AMERICA, an unincorporated Association,
Petitioner

vs.

SOUTHERN RAILWAY COMPANY, a corporation organized and existing under the laws of the State of Virginia,
Respondent

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA

BRIEF FOR THE PETITIONER

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BRIEF FOR THE PETITIONER

OPINIONS BELOW

The first opinion of the Supreme Court of South Carolina is reported in 210 S. C. 121, 41 S. E. 2d 774, and appears at Record 31-43. The second opinion is reported in 215 S. C. 280, 54 S. E. 2d 816 and appears at Record 557-571.

JURISDICTION

The final opinion and judgment of the Supreme Court of South Carolina was entered August 15, 1949. Petition for certiorari was filed on October 29, 1949, and was granted on December 12, 1949. The jurisdiction of this court is in-

voked under Section 1257(3) of Title 28, United States Code.

STATUTES INVOLVED

The pertinent statutes involved are the Railway Labor Act, 45 U.S.C.A., Section 151 *et seq.*, and the Declaratory Judgment Act of the State of South Carolina, Section 660, Code of Laws of South Carolina, 1942, at page 497 of Volume 1.

STATEMENT

The petitioner, a railway labor organization national in scope, challenges the judgment of the Supreme Court of South Carolina holding that in an action for a declaratory judgment brought by the respondent railroad against the petitioner the trial court had concurrent jurisdiction with the National Railroad Adjustment Board to adjudicate a dispute involving the interpretation and application of the collective bargaining agreement between the parties.

Petitioner is the duly accredited bargaining agent and representative of the craft and class of conductors employed by the respondent (R. 1, 5, 513). The respondent is a Virginia corporation operating in interstate commerce as a carrier by railroad in various states, including the State of South Carolina (R. 1, 5, 32). The rules, rates of pay and working conditions of conductors employed by respondent are governed by a collective bargaining agreement negotiated between petitioner and respondent (R. 1, 170; Plaintiff's Exhibit 12, R. 72, 435). Both petitioner and respondent are subject to the Railway Labor Act (R. 32, 209, 211).

Prior to and at the time of the commencement of this

action the petitioner was engaged in negotiations with respondent in an effort to settle and adjust a dispute arising out of the interpretation or application of the collective bargaining agreement between the parties (R. 169, f. 675; 211-212, f. 843-846). The dispute related to the rates of pay applicable to conductors under the collective agreement in respect to operations of the respondent between Pregnall, South Carolina, and the plant of the Ancor Corporation lying about two miles north of Harleyville, South Carolina (R. I-14; 170).

Prior to the commencement of the suit, petitioner had notified respondent on April 2, 1945, of its intention to submit the dispute to the National Railroad Adjustment Board for determination (R. 322-324; Defendant's Exhibit M at R. 454). Petitioner, however, was still attempting *to adjust* the dispute by conferences and negotiations at the time that respondent commenced this action against petitioner on July 12, 1945, for a declaratory judgment, in which respondent prayed that the Court of Common Pleas for Charleston County, South Carolina, hear, determine and adjudicate the proper interpretation and application of the collective agreement and enter its decree declaring the rights of the parties thereunder (R. 211, f. 843-844; 169, f. 675).

Petitioner contended throughout the proceedings in the court below, and here contends, that the issues presented to the state court for determination were not justiciable for the reason that the suit represented an attempt to have a state court invade a field of interstate commerce pre-empted by Congress in the Railway Labor Act; that petitioner would be deprived of its right of collective bargaining, and its right to avail itself of the further remedies and procedures provided in the Act; and that the subject

matter of the suit directly impinged on the primary jurisdiction of the National Railroad Adjustment Board.

The state court overruled petitioner's contentions and adjudicated the issue of interpretation and application of the collective agreement in favor of the respondent.

Summary of Facts Involved in the Controversy

The extended record is principally devoted to oral and documentary evidence of the meaning of technical railroad terms, and to evidence of practices, customs and usages on which both parties relied in support of their respective contentions concerning the interpretation and application of the bargaining agreement in suit

In addition, respondent offered evidence from which it was claimed that the inadequacy of the Adjustment Board procedure appeared. The testimony is summarized here to show the exact nature of the issue presented to the state courts for judicial determination.

The dispute in controversy arose as follows: On and after September 7, 1944, certain individual conductors assigned by respondent in local freight service to a 63 mile "straightaway" run between Charleston and Branchville, South Carolina, filed "time claims" against respondent claiming additional pay under their collective bargaining agreement, and particularly Article 5 thereof, for a 12½ mile "side trip" which respondent had required them to make at Pregnall, South Carolina (R. 53-59; 90-100; 417-425). Pregnall is an intermediate point on their assigned "straightaway" run between Charleston and Branchville (R. 59, 62-66).

It is undisputed that the Charleston-Branchville run

was bulletined and assigned as a "straightaway" run to be made each way tri-weekly (R. 59, 449-451, Defendant's Exhibit J and K). At intermittent intervals, however, the respondent required these conductors to interrupt their "straightaway" run at the intermediate point known as Pregnall, leave their train on the main line, cut off the engine, pick up freight cars from the Pregnall siding, and make an unassigned trip on a side track running off Pregnall through the town of Harleyville, South Carolina, (not an intermediate point on the Charleston-Branchville line) and on to the plant of the Ancor Corporation, lying 6¼ miles north of Pregnail (R. 7, 59-68, 106-107; Plaintiff's Exhibit 11, R. 434). Respondent ordered this side trip, requiring an average of two hours, for the purpose of delivering or picking up cars of freight at the Ancor plant (R. 106-107, 155). The conductors, after making this 12½ mile two-hour side trip, then continued on their assigned "straightaway" run to its destination. (R. 106-107; 155, f. 620).

The conductors assigned to the Charleston-Branchville "straightaway" run, claiming that the Pregnall side trip had been ordered in violation of the rules of their collective agreement and contrary to their bulletined and assigned "straightaway" run, filed the "time claims" with the respondent claiming, in addition to the compensation for their regular assigned run, compensation for the Pregnall-Ancor plant trip as a new run of "100 miles or less." (R. 90-99; 417-419). The respondent declined to compute the compensation separately for "each" trip of "100 miles or less" as the conductors contended was required by Article 5 of their agreement (R. 426-430), and, on the contrary, totaled the time on the regular Charleston-Branchville run to that spent on the Pregnall-Ancor plant side trip as though the side trip were a part of the assigned "straightaway" run

and paid the conductors on a continuous time basis, or 9.10 plus an average of 24 minutes overtime. (R. 8-9, 155 f. 620, 179-180, 183 f. 732) Since these conductors were entitled to a minimum of $9.10 for the regular assigned run "100 miles or less," the respondent's method resulted in these conductors receiving an additional average payment of only 68¢ (twenty-four minutes "overtime" at $1.71 per hour) for the two-hour 12½ mile "side trip" (R. 155, f. 620; 183, f. 732).

Article 5 of the collective agreement provides as follows (R. 72; Plaintiff's Exhibit 12, R. 435): [1]

> "(a) In all road service, except passenger, 100 miles *or less*, 8 hours *or less* (straightaway *or* turnaround), shall constitute a day's work; miles in excess of 100 will be paid for at the mileage rates provided, except as provided for in Article 28.
>
> "(b) In through freight or mixed train service, a straightaway run is a run *from* one terminal *to* another terminal; and *not less* than one hundred miles will be allowed for *each* such run, except as provided for in Article 28.

The collective agreement further provides that runs be advertised and bulletined so that conductors may bid on them in the order of their seniority (Plaintiff's Exhibit No. 12, Article 26, R. 435).[2] Plaintiff's witnesses conceded that the bulletin establishes a fixed and regular assignment

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[1] Emphasis is supplied throughout this brief unless otherwise indicated.

[2] The complete text of the collective agreement in suit, Plaintiff's Exhibit No. 12, is not reprinted in the record. This exhibit was filed separately as a part of the transcript of the record in the courts below and was separately certified and filed in this court.

and that trips ordered by the carrier off the "straightaway" assignment entitled the conductor, in addition to his regular trip pay, to the additional minimum pay of "100 miles or less" for "each" added run (R. 133-137, 215, 216-217, 220-221). Mr. Birthright, Superintendent on the Southern Railway, testified for the respondent as follows:

> "Q. Mr. Birthright, what is the difference between an assigned man and an unassigned man?
>
> A. An unassigned man and an assigned man? Well, my interpretation is that a man who is assigned is assigned *to a regular job.*
>
> Q. A particular run, isn't that right?
>
> A. *On some particular run, yes, sir.*" (R. 133, f. 531)
>
> • • •
>
> "Q. And when he is required to do anything beyond that job he is entitled under Rule 5(a) to an *additional* day?
>
> A. *That is correct.*" (R. 137, f. 546).

In accord with the foregoing, the respondent did not seriously contend that if unadvertised "side trips" were added to a "straightaway" run such trips were not compensable under Article 5 as an added "basic day" of "100 miles or less." While attempting to limit their testimony to so-called "branch" line "side trips," (and no such distinction as to "branch" lines is to be found in the collective agreement) the respondent's witnesses conceded that any side trip of "100 miles or less" was compensable as an

added "basic day," in addition to the regular assigned trip. Respondent's Assistant Personnel Officer testified under cross-examination, that (R. 221 f. 882):

> "In a situation of that kind, where an actual side trip is made over a branch line or a main line *which is not included in a man's assignment*, or in the case of a local freight, in the case of through freight if he isn't notified before leaving the terminal, *it has been customary to allow a man an additional day's pay.* If overtime accrues on the trip *that time consumed in making this so-called side trip is deducted. He isn't paid twice for that service.*"

In this case respondent claimed that the Pregnall-Ancor Plant movement was not really a "side trip," admittedly compensable at the regular pay for "100 miles or less," but was merely a "switching" operation, and that by practices and usages alleged in its complaint to have existed "since 1910" respondent claimed that "similar" industrial switching movements had been included by inference as a part of the assigned "straightaway" run and regular pay therefor (R. 4-14).

On the trial of the cause, the respondent attempted to support this contention by identifying numerous spur tracks on the Southern Railway on which conductors assigned to a "straightaway" run had regularly switched freight cars to industrial plants or on to house tracks without demanding extra compensation therefor. *All of these spur tracks, however, were in fact located at stations on the assigned run* and were 1800 *feet* or less in length (R. 80-81, 84-86).

These switching operations of a few hundred *feet* at stations *located on the assigned "straightaway" run* bear no similarity whatever to the Pregnall 12½ *mile* "side trip"

off the run (R. 80-81, 84-86). "Switching" operations of the type referred to by respondent did not arise by "practice," are not an exception to the "straightaway" rule, and are *specifically covered* in the collective agreement under Article 15 which governs switching "*at terminals*" and "*at* intermediate points" (Plaintiff's Exhibit 12, Article 15, R. 435). "Switching," therefore, is performed *at stations* located *on the assigned run* (R. 80-81, 84-86). There has, in fact, never been any dispute concerning the performance by local freight crews of "switching" *at* stations or "*intermediate points*" *located on the assigned run* and such crews have always set out or picked up cars on spur switch tracks *of not more than* a few hundred feet in length which were located at such intermediate points, all as provided by Article 15 of the collective agreement (R. 80-81, 84-86, 384, 394-399).

On the average, such spur switching tracks at stations along a "straightaway" run are of a length of "two or three blocks" or "from 20 to 30 car lengths" (R. 79-86, 246, 397). Such "switching" operations of a few hundred feet, performed *at* stations on the line in accord with the specific provisions of the collective agreement, are in nowise analagous and wholly failed to establish a custom or practice of conductors to make uncompensated "side trips" of more than 6 miles *entirely away from a station on the line* (R. 398).

The respondent failed to identify a single side track of a mile or more in length on the whole 8000 miles of the Southern Railway System *and couple it with any showing whatever* that conductors had regularly traveled it as a part of an assigned "straightaway" run without additional compensation or protest. In each instance in which the movement had extended beyond the ordinary concept of a mere

"switching" movement of a few hundred feet at a station *on the assigned "straightaway" run*, and had extended several miles *off* the "straightaway" run, the record shows that in the past the respondent had paid an *additional* minimum day under Article 5 of the collective agreement for such trips (R. 134-137, 193, 215, 216-217, 221, 339-340); or that the respondent had *bargained for and obtained an agreement* with petitioner providing a special rate of pay therefor (R. 234-239, 257-258, Plaintiff's Exhibit 16, R. 237-239, Defendant's Exhibit I, R. 448; 239-240, 336-337, Defendant's Exhibit O, R. 455); or that the particular operation and rate of pay therefor *was in dispute* (R. 169, 255-256).

The record is barren of any evidence whatever that conductors had regularly, and as a practice, ran off their assigned "straightaway" run for a mile or more, all without additional compensation or without protest.

In this instance the individual conductors presented their claims for the Pregnall "side trip" directly to officials of the respondent and upon payment being declined referred their claims to petitioner as their representative for the further handling of the claims in their behalf under the provisions of the Railway Labor Act (R. 316-318).

Petitioner, in protection of the claims of these individual conductors and in protection of the agreement as it applied to the craft as a whole, sought to reach an adjustment of the dispute by negotiations with officers of the respondent (R. 316-318, 427-435, 211). Negotiations were conducted between the parties by correspondence and through conference in accord with the usual and customary practice (R. 56, 128-131, 159-169, 210-211). In compliance with Section 3(i) of the Railway Labor Act, petitioner sought to handle the dispute by conference "up to and in-

cluding the chief operating officer of the carrier designated to handle such dispute" as a condition precedent to submitting it, if necessary, to the National Railroad Adjustment Board for determination (R. 56, 211, 159-169, 322-324, 426-435, 454).

On April 2, 1945, petitioner, through its General Chairman, *notified the respondent by letter that petitioner intended to submit the claim of Conductor M. K. Lloyd, presenting the issues arising out of this dispute, to the Adjustment Board for determination* and requested that respondent stipulate that the award of the Board in the Lloyd claim would govern identical claims of other conductors (R. 322-324; Defendant's Exhibit M at R. 454). No reply was received and *negotiations for the settlement of the controversy were still in progress* when respondent, on July 12, 1945, commenced this action against petitioner in the Court of Common Pleas for Charleston County, South Carolina, praying for an interpretation of the agreement and a declaratory judgment of nonliability (R. 1-14; 169, f. 675; 211-212, f. 843-846).

Proceedings in the Courts Below

Respondent's complaint, brought under the South Carolina Declaratory Judgment Act, Section 660, Code of Laws of South Carolina, 1942, alleged that a controversy existed concerning the rights and obligations of respondent under the collective bargaining agreement entitled "Schedule of Wages, Rules and Regulations of Conductors," effective May 16, 1940; that specifically the controversy consisted of a disagreement between petitioner and respondent as to the proper construction to be placed upon certain provisions of the collective agreement as applied to the work to be performed by conductors, and whether the perform-

ance of certain services by conductors at Pregnall, South Carolina might be required of them by respondent without payment of additional compensation (R. 4-14).

The respondent prayed for a declaratory judgment adjudicating that the movements to the Ancor Corporation "are a part of the said conductors' service trip under the provisions of the agreement of May 16, 1940, . . . as uniformly interpreted by the parties thereto for many years," and asked that the court enter its judgment "declaring the rights, obligations and other legal relations" of the parties and adjudicate that respondent "is under no legal liability to satisfy said claims or any similar claim which has been made or may be made by defendant" (R. 13-14).

It is undisputed that the controversy presented is one typical of the kind committed by Congress for determination by the National Railroad Adjustment Board. The respondent, however, asserting that the Adjustment Board procedure is inadequate, maintained that it had the *option* of proceeding to the Board or of obtaining a judicial adjudication by some court of competent jurisdiction (R. 13-14; 524, f. 2094; 527-528).

Petitioner removed the action to the United States District Court. The case was remanded on motion by the respondent as not involving a federal question. *Southern Railway Co. vs. Order of Railway Conductors*, 63 F. Supp. 306.

At every stage of the proceedings in the state courts, petitioner denied the right of the courts of South Carolina to interfere with collective bargaining and to assume jurisdiction for adjudication of a railway labor dispute of the kind committed by Congress for determination by the National Railroad Adjustment Board or by the other procedures provided in the Railway Labor Act, which dispute

was being progressed under the Act *at the time of intervention by the state court.*

In its answer to respondent's complaint, petitioner averred that it had been and was handling the claims in dispute in accord with the provisions of the Railway Labor Act; that petitioner was seeking to settle and adjust the claims with respondent by negotiation and collective bargaining as provided in said Act; that petitioner was then seeking to handle the claims in accord with Section 3(i) of the Act "in the usual manner" by negotiation as a condition precedent to filing said claims with the National Railroad Adjustment Board for hearing and determination. Petitioner denied the right of respondent by judicial decree to side-step and by-pass the Railway Labor Act and deny petitioner, as the duly accredited representative of the class and craft of conductors as a whole as well as the individual conductors involved, the rights of negotiation and collective bargaining, and the right to submit and obtain a hearing and determination of the dispute by the National Railroad Adjustment Board, or to otherwise proceed under the provisions of the Railway Labor Act (R. 15-25).

After filing its answer, petitioner, in accord with South Carolina practice, moved the trial court to dismiss the cause on demurrer on the grounds that the court was without jurisdiction of the subject matter of the action in that it involved a dispute governed by the Railway Labor Act; that Congress, in the exercise of its power over interstate commerce, had provided in the Railway Labor Act the sole and exclusive procedure for adjustment, settlement and determination of the disputes and controversies of the character alleged in respondent's complaint; that the Railway Labor Act imposed on both parties a mandatory duty of negotiation and that the state court lacked jurisdiction to

hear and determine disputes concerning interpretation of the collective agreement and thereby to enable respondent to evade its mandatory obligation of collective bargaining (R. 25-29).

The trial court on April 22, 1946, sustained the demurrer and dismissed the action for lack of jurisdiction of the subject matter and on discretionary grounds (R. 29-31).

Respondent appealed to the Supreme Court of South Carolina from the order of dismissal on demurrer. On February 13, 1947, the Supreme Court of South Carolina reversed the trial court and remanded the cause for trial on the merits (R. 31-43). This decision, not a final judgment, is reported in 210 S. C. 121, 41 S. E. 2d 774.

In reversing the cause and remanding it for trial on the merits, the Supreme Court of South Carolina construed the Railway Labor Act as providing that (R. 39, f. 155-156):

> "* * * Congress intended that controversies of the character set forth in this case may be adjusted in either of two ways: First, under the authority of the Act by submitting the dispute to the National Railroad Adjustment Board; or, second, by exercising the common law rights of any party to bring an action to construe a contract and have his rights declared. There is concurrent jurisdiction of the subject-matter of a suit of this kind, either by a court of competent jurisdiction or by the National Railroad Adjustment Board."

The South Carolina Supreme Court further held that the action was justified by and fell squarely within the South Carolina Declaratory Judgment Act, Section 660, Code of Laws of South Carolina, 1942 (R. 39).

Prior to trial on the merits, petitioner renewed its objections to maintenance of the action in view of the Rail-

way Labor Act (R. 44). In the course of the trial, the petitioner sought to show the steps being taken by it in progressing the dispute under the Act as bearing on the jurisdiction and judicial discretion of the court to enter a final judgment on the merits (R. 211-212). The court sustained the respondent's objections to this evidence and also refused to admit in evidence the Adjustment Board proceedings, filed after commencement of the suit but prior to trial. (R. 206-208, 415-416; Defendant's Exhibit E at R. 457-509). The court expressed its impatience with all evidence relating to the petitioner's efforts to follow the procedures provided in the Railway Labor Act (R. 211):

> "We are just rolling empty barrels around here talking about what is in the railroad act. We all admit — that the railroad act is here — the railroad is under it; the conductors are under it. All of that is true. Why put all that in the record? We are just wasting time."

At the conclusion of the trial on the merits, petitioner again moved the trial court to dismiss the action for lack of jurisdiction, or that in the alternative and in the exercise of a proper judicial discretion the action be dismissed, so as to permit the controversy to be determined by the Adjustment Board as provided by the Railway Labor Act or by the further procedures provided in the Act (R. 511).

The trial court asserted jurisdiction and overruled all grounds urged by petitioner for dismissal of the action (R. 512-528).

In asserting the propriety of judicial intervention the trial court stated in its decree (R. 524):

> "Statistics from the annual reports of the National Railroad Adjustment Board to Congress for the year

1944, 1945 and 1946 introduced by plaintiff (respondent) show that that Board has a very large backlog of cases and that it would take several years to secure a decision or award, which would still be subject to a court review entailing a trial de novo. It thus appears that that administrative remedy *is not speedy and adequate.* On the other hand, this court is in a position now to make *a binding and final declaration that will settle the controversy* between plaintiff and defendant."

The trial court entered a final judgment on August 30, 1947, construing the collective agreement in favor of respondent and adjudicating the rights of the parties thereunder as so construed (R. 512-528).

Petitioner appealed from the final judgment of the trial court to the Supreme Court of South Carolina and again renewed its objections and exceptions under the Railway Labor Act (R. 529-535). On appeal petitioner applied for and was granted the right to reargue the jurisdiction of the trial court to adjudicate a dispute governed by and being processed under the Railway Labor Act (R. 581-584). The jurisdictional issue was extensively argued on appeal, the petitioner devoting approximately half of a 100 page brief to this question and the respondent filed an extensive brief in reply. The petitioner also challenged the findings of the trial court as wholly without support in the record (R. 536-555).

The Supreme Court of South Carolina in a per curiam opinion overruled all of petitioner's exceptions and adopted and affirmed the final judgment and decree of the trial court (R. 557-559).

This court has granted certiorari for review of the questions presented.

QUESTIONS PRESENTED

1. In actions brought by railroad carriers against representatives of their employees, do state courts have jurisdiction to enter declaratory judgments interpreting collective bargaining agreements and declaring the rights of the parties thereunder before such carriers have exhausted the remedies provided by the Railway Labor Act?

2. May state courts intervene in disputes being progressed under the Railway Labor Act and by-pass and supersede the jurisdiction of the National Railroad Adjustment Board by a binding and final declaratory judgment interpreting a collective bargaining agreement and declaring the rights of the parties thereunder without giving the Adjustment Board the first opportunity to pass on the dispute?

3. May state courts exercise concurrent jurisdiction with the National Railroad Adjustment Board to determine disputes over which the Board has authority?

4. Was the state court's exercise of jurisdiction an abuse of judicial discretion in granting declaratory relief without giving the National Railroad Adjustment Board the first opportunity to pass on the dispute?

5. May state courts terminate collective bargaining in disputes subject to the Railway Labor Act by a binding and final declaration of the rights of the parties in such dispute and in all similar disputes which may arise in the future?

6. Is the South Carolina Declaratory Judgment Act, Section 660 of South Carolina Code of Laws, 1942, as applied, repugnant to the Railway Labor Act?

7. Did the courts of South Carolina deprive petitioner of rights, privileges and immunities under the Railway Labor Act in overruling petitioner's exceptions and objections to maintenance of this action?

SUMMARY OF ARGUMENT

Petitioner's argument may be summarized as follows:

1. The dispute which the respondent railroad submitted to the state courts of South Carolina for adjudication involved the sole question of the proper interpretation or application of a collective bargaining agreement between a railroad carrier engaged in interstate commerce and the collective bargaining representative of the class and craft of conductors employed by this carrier. Congress, in the Railway Labor Act, has legislated a comprehensive and all-inclusive system for the handling of labor disputes in the rail transportation field, expressly stating in the Act that it is designed to provide for the prompt and orderly settlement of "all disputes" arising out of "the interpretation or application of agreements concerning rates of pay, rules or working conditions" (45 U. S. C. A. Section 152). Thus Congress has pre-empted the field of interstate railroad labor relations and state action, statutory or judicial, is precluded.

2. The decision of the Supreme Court of South Carolina, in holding that courts exercise concurrent jurisdiction with the National Railroad Adjustment Board, is in conflict with the decisions of this court, and particularly with the decision of this court in *Order of Railway Conductors vs. Pitney*, 326 U. S. 561.

3. Congress created, in the National Railroad Adjustment Board, a specialized tribunal with primary jurisdiction of disputes involving interpretation and application of rail collective bargaining agreements. This court has recognized the specialized competence of the Adjustment Board and the fact that railroad collective bargaining agreements present technical factual questions and an appreciation of usages and customs in a specialized field for their proper inter-

pretation. In *Order of Railway Conductors vs. Pitney*, 326 U. S. 561, this court applied the rule of primary jurisdiction to the Adjustment Board and reversed the lower courts for their error in assuming jurisdiction to hear and determine a dispute involving interpretation and application of rail collective bargaining agreements. The scope and evident purpose of Congress in enacting the Railway Labor Act and in creating a National Railroad Adjustment Board, composed of members especially competent to hear disputes of the character here involved, conclusively demonstrates the Congressional intent that the Board should have primary jurisdiction over such disputes.

4. The decision of this court in *Moore vs. Illinois Central Railroad*, 312 U. S. 630, is not, as contended by the respondent, controlling on the issue here presented. The *Moore* case involved a suit for damages for wrongful discharge in which an individual employee sought damages accrued and to be accrued in the future. This court, in holding that the individual plaintiff in that case did not need to present his dispute to the National Railroad Adjustment Board as a prerequisite to judicial action, did not have presented to it the question here in issue, and did not hold or decide that courts held concurrent jurisdiction with the Adjustment Board for the adjudication of disputes of the type of which the Adjustment Board is given authority by the Railway Labor Act.

5. The courts of South Carolina were not entitled by a judicial decree to interfere with and nullify the right of this petitioner to avail itself of the remedies and procedures of the Railway Labor Act and to seek to settle and adjust the controversy by the continuing processes of collective bargaining, or by submission of the dispute to the National Railroad Adjustment Board, or by the invocation of the further procedures provided in the Act. The decree below

purports to be a final and binding adjudication and a final settlement of the controversy, not only with respect to the dispute directly involved but in respect to all "similar" disputes which may arise in the future. The effect of the decree is to deprive petitioner of its rights of representation under the Railway Labor Act as to all such disputes. Respondent has obtained a judicial declaration governing the rates of pay, rules and working conditions of the class and craft of conductors on the Southern Railway system, in direct conflict with the provisions of the Railway Labor Act that matters of this kind shall be determined in negotiations between the parties and that disputes between them shall be subject to the procedure provided in the Act. The state courts of South Carolina, as a matter of law, were bound to decline to enter a decree which directly conflicts with the provisions of the Railway Labor Act as to collective bargaining and the further procedures for the settlement and adjustment of disputes as provided in the Act.

6. The Railway Labor Act was intended to embrace all rail labor disputes and provide the exclusive procedures in connection therewith. A consideration of the Act as a whole demonstrates that the Act encompasses the entire field of rail labor disputes and the settlement, adjustment and determination thereof and that any attempt to read into the Act a provision for concurrent jurisdiction of state courts in such disputes is repugnant to and at variance with its provisions.

ARGUMENT

A

Congress Has Pre-empted The Field of Regulation of Labor Disputes on Interstate Railroads

The Railway Labor Act is the product of fifty years of legislation by Congress in the field of regulation of labor relations of interstate railroads. The history of this legislation has been reviewed by the court in a number of decisions involving questions arising under the Act and will not be repeated here. The Congressional aim has been to create a system complete in itself for securing peaceful industrial relations on the railroads so as to prevent the interruption of interstate commerce growing out of economic strife between the carriers and their employees. In enacting the present Act, Congress declared that the legislation was intended (45 U. S. C. A. Section 152(5)):

> "to provide for the prompt and orderly settlement of *all* disputes growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions."

In the first instance, it is mandatory upon the carriers and the representatives of their employees alike to exert every reasonable effort to make and maintain agreements and "to settle all disputes, *whether arising out of the application of such agreements or* otherwise * * *." (Section 2.) Failing settlement, the Act makes provision for a National Railroad Adjustment Board which is given jurisdiction for determination of disputes growing out of grievances or out of the interpretation or application of agreements, concerning rates of pay, rules or working conditions (Section 3).

Either party may refer a dispute involving interpretation of the collective agreement to the appropriate division of the Adjustment Board, and awards of the Adjustment Board may be enforced by appropriate action of the United States District Court, Section 3 (p). Controversies of the type referable to the Adjustment Board were described by this Court as "minor" disputes in *Elgin, J. & E. Railway Co. vs. Burley*, 325 U. S. 711.

As noted by this court in the *Burley* case, "major" disputes are handled first by the National Mediation Board with further provisions in the Act for arbitration and for hearings before Emergency Boards appointed by the President (Section 4-10).

Under its authority to regulate commerce, Congress has thus legislated in the Railway Labor Act a comprehensive and all-inclusive system for the handling of all labor disputes in the rail transportation field.

Labor relations on interstate rail carriers are as clearly within the constitutional power of Congress over interstate commerce as the transportation itself. This was settled in *Texas & N. O. R. Co. vs. Brotherhood of Railway and S. S. Clerks*, 281 U. S. 548, and the *Virginian Railway Co. vs. System Federation No. 40*, 300 U. S. 515. In the case last cited this court said:

> "The power of Congress over interstate commerce extends to such regulations of the relations of rail carriers to their employees as are reasonably calculated to prevent the interruption of interstate commerce by strikes and their attendant disorders. * * * *It was for Congress to make the choice of the means* by which its objective of securing the uninterrupted service of interstate railroads was to be secured, and its judgment, supported as it is by our long experience with industrial disputes, and the history of railroad labor rela-

tions, to which we have referred, is not open to review here."

The Railway Labor Act is rendered impotent if carriers, subject to its provisions, may ignore its expressed policy and avoid the procedures of the Act by the expedient of submitting disputes for the judicial determination of state courts under state declaratory judgment acts.

It is respectfully submitted that the intervention of state courts under state declaratory judgment acts must necessarily constitute an interference with the comprehensive system provided by Congress for the regulation of labor relations on interstate railroads, and that, as applied, the South Carolina Declaratory Judgment Act, Section 660 of the South Carolina Code of Laws 1942, is to this extent repugnant to the Railway Labor Act.

In enacting the Railway Labor Act Congress has made the choice of the means by which its objective of securing uninterrupted service of interstate railroads is to be secured, and the authority of state legislative and judicial bodies was terminated. *Bethlehem Steel Co. vs. New York State Labor Relations Board*, 330 U. S. 767, and *LaCrosse Telephone Co. vs. Wisconsin Employment Relations Board*, 336 U. S. 18.

In the *Bethlehem* case this court said:

"It long has been the rule that exclusion of state action may be implied from the nature of the legislation and the subject matter although express declaration of such result is wanting."

Congress specifically stated in the general purposes expressed in Section 2 of the Act that it was intended "to provide for the *prompt and orderly* settlement of *all* disputes concerning rates of pay, rules, or working condi-

tions; * * * " and "to provide for the *prompt and orderly* settlement of *all* disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Language more comprehensive could not have been devised and it is obvious that Congress did not intend that the application of the Act should be dependent on and subject to intermittent judicial intervention, at the whim of either party.

We respectfully submit that Congress has occupied the field, and the state courts, purporting to act under the state declaratory judgment acts, or otherwise, are without jurisdiction to intervene and terminate the procedures of the Railway Labor Act.

B

The Decision of the Supreme Court of South Carolina is in Conflict with the Decisions of this Court

This court has consistently held that the Railway Labor Act precludes judicial intervention in the labor controversies of interstate railroads, except in the limited instances in which, *in the absence of administrative remedies,* a denial of jurisdiction in the courts would result in a loss of the rights specifically granted in the Act.

Judicial intervention in rail labor disputes has been strictly defined. Unless a specific authorization be found in the Railway Labor Act, judicial intervention is precluded and the parties must be left to the administrative remedies provided in the Act for the adjustment and settlement of their disputes. *General Committee, etc., vs. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323; *Switchmen's Union vs. National Mediation Board*, 320 U. S. 297; *General Committee, etc., vs. Southern Pacific Co.*, 320 U. S. 338; *Brotherhood of*

Railroad Trainmen vs. Toledo, P. & W. R., 321 U. S. 50; *Steele vs. Louisville & Nashville R. Co.*, 323 U. S. 192; and *Order of Railway Conductors vs. Pitney*, 326 U. S. 561.

In *General Committee, etc. vs. Missouri-Kansas-Texas R. Co.*, 320 U. S. 323, the plaintiff Brotherhood sought a declaratory judgment interpreting the contract between the plaintiff and the carrier defendant, and prayed that an agreement between the carrier and the Brotherhood of Locomotive Firemen and Enginemen be held invalid. In holding the district court without jurisdiction to adjudicate the dispute there involved, in view of the Railway Labor Act, this court specifically held that the Act precluded judicial jurisdiction except in limited instances stating:

> "Congress has been highly selective in its use of legal machinery. * * * In view of the pattern of this legislation and its history the command of the Act should be explicit and the purpose to afford a judicial remedy plain before an obligation enforcible in the courts should be implied. Unless that test is met *the assumption must be that Congress fashioned a remedy available only in other tribunals.*"

The limited instances in which this court has found jurisdiction in courts concerning rail labor disputes are shown by the following cases: *Virginian Railway Co. vs. System Federation No. 40*, 300 U. S. 515 (suit for mandatory order directing the carrier to treat with plaintiff union); *Order of Railroad Telegraphers vs. Railway Express Agency, Inc.*, 321 U. S. 342 (suit to enforce an award of the Adjustment Board brought under Section 3 (p), 45 U. S. C. A., 153 (p), of the Railway Labor Act); *Steele vs. Louisville & Nashville Railroad Company, et al*, 323 U. S. 192 (suit to enjoin defendant carrier and labor organization from exercising discrimination against negro members of

rail craft); *Tunstall vs. Brotherhood of Locomotive Firemen and Enginemen, etc.*, 323 U. S. 210 (same as *Steele case*, supra); *Order of Railway Conductors vs. Swan, et al*, 329 U. S. 520, (suit to remove an administrative stalemate in the Adjustment Board).

Thus, in holding jurisdiction in *Steele vs. Louisville & Nashville Railroad Company, et al*, 323 U. S. 192, this court found that the Railway Labor Act had not excluded petitioner Steele's claims from judicial consideration on the fact that no administrative remedy was available. In the *Steele* case this court said:

> "The question here presented is not one of a jurisdictional dispute, determinable under the administrative scheme set up by the Act, cf. *Switchmen's Union v. National Mediation Board*, 320 U. S. 297; *General Committee v. M.-K.-T. R. Co.*, 320 U. S. 323; *General Committee v. Southern Pacific Co.*, 320 U. S. 338; *Brotherhood of Railway & Steamship Clerks v. United Transport Service Employees*, 320 U. S. 715, 816, or restricted by the Act to voluntary settlement by recourse to the traditional implements of mediation, conciliation and arbitration. *General Committee v. M.-K.-T. R. Co., supra*, 332, 337. There is no question here of who is entitled to represent the craft, or who are members of it, issues which have been relegated for settlement to the Mediation Board, *Switchmen's Union v. National Mediation Board, supra; General Committee v. M.-K.-T. R. Co., supra. Nor are there differences as to the interpretation of the contract which by the Act are committed to the jurisdiction of the Railroad Adjustment Board.*"

Differences as to the interpretation of the collective agreement, which this court observed to be absent in the *Steele case, supra*, were presented to this court in *Order of*

Railway Conductors vs. Pitney, 326 U. S. 561. In the *Pitney* case this court specifically denied judicial power to adjudicate a dispute involving interpretation and application of a railway collective bargaining agreement in advance of submission of the dispute for determination by the National Railroad Adjustment Board.

Following the *Pitney* case, decided in 1946, the Federal Courts of Appeal and the District Courts have denied jurisdiction of the courts to adjudicate and determine such disputes and have held that disputes between railroad carriers and rail employee organizations, involving the interpretation of collective agreements, must be submitted to the Adjustment Board for determination as provided in the Railway Labor Act.

Order of Railway Conductors vs. Pitney, (1946) 326 U. S. 561.

Missouri-Kansas-Texas R. Co. vs. Randolph, 8th Cir. (1947) 164 F. 2d 4.

Order of Railroad Telegraphers vs. New Orleans, Texas & Mexico Railway Co., 8th Cir. (1946) 156 F. 2d 1.

Brotherhood of Railroad Trainmen vs. Texas and Pacific Railway Co., 5th Cir. (1947) 159 F. 2d 822.

Illinois Central Railroad Co. vs. Brotherhood of Railroad Trainmen, et al (D. C. Ill., 1949) 83 F. Supp. 930

Atlantic Coast Line Railroad Co. vs. Brotherhood of Railroad Trainmen, et al, decided by the U. S. District Court for the Southern District of Florida on March 30, 1948 (unreported decision set forth in the appendix hereto).

Seaboard Airline Railroad Co. vs. Brotherhood of Railroad Trainmen, et al, decided on March 25, 1949, by the U. S. District Court for the Northern District of Alabama (unreported decision set forth in appendix hereto).

In the case at bar the Supreme Court of South Carolina refused to follow the decision of this court in the *Pitney* case and erroneously interpreted the Railway Labor Act as merely providing a permissive remedy to which the parties might avail themselves at their option, but which was held to be simply an alternative to resort to judicial action. By this line of reasoning the South Carolina Supreme Court held that it had concurrent jurisdiction with the National Railroad Adjustment Board to enter a judicial decree interpreting and applying the terms of a railway collective bargaining agreement.

This decision, it is submitted, is in direct conflict with the express provisions of the Railway Labor Act and with the decisions of this court in interpreting it and construing it. In the *Pitney* case, *supra*, and in the other decisions of this court cited above, this court has expressly held that a party subject to the Railway Labor Act is not permitted to by-pass and evade the provisions of the Act by resorting to judicial action, and that the courts lack jurisdiction to intervene and supersede the administrative remedies and procedures provided in the Act.

The Supreme Court of South Carolina, in reversing the original order sustaining petitioner's demurrer in 210 S. C. 121, 41 S. E. 2d 774, sought to distinguish the case at bar from the decision of this court in the *Pitney* case on the ground that the *Pitney* case involved (1) a jurisdictional dispute between two unions; (2) a suit for injunction rather than declaratory judgment, and (3) was "complicated" by the dual function of the court acting in bankruptcy and in equity. It is respectfully submitted that these distinctions are without merit.

By its reference to "jurisdictional" disputes, the South Carolina Supreme Court apparently reached the conclusion that this court had singled out "jurisdictional" disputes as

not susceptible to judicial intervention and as referable only to the administrative procedures of the Railway Labor Act, but that other types of disputes are susceptible to determination by the concurrent jurisdiction of either the Adjustment Board or the courts.

In the *Pitney* case, *supra*, this court mentioned in passing that the dispute there submitted for judicial determination involved the jurisdictional claims of two unions. The decision of this court in the *Pitney* case, however, placed no emphasis on this fact and is squarely bottomed on the proposition that Congress had created in the Adjustment Board an agency especially competent to deal with the intricate and technical factual questions involved in an interpretation of rail collective bargaining agreements, and that the Adjustment Board should be given the first opportunity for determination of such disputes.

This court has not held, as the Supreme Court of South Carolina apparently concluded, that Congress had created in the Railway Labor Act an exclusive administrative remedy in the National Mediation Board and a nonexclusive administrative remedy in the Adjustment Board. Nor has this court held that the remedy of the Adjustment Board is exclusive with respect to "jurisdictional" disputes, but non-exclusive in other types of disputes.

We submit that the effort of the Supreme Court of South Carolina to distinguish the *Pitney* case on the ground that it involved a "jurisdictional" dispute is without merit.

The further suggestion of the Supreme Court of South Carolina that this court might have reached a different conclusion had the *Pitney* case involved a declaratory judgment action rather than a proceedings for injunction is likewise erroneous. As stated by this court in *Macauley vs. Waterman S. S. Corporation*, 327 U. S. 540, 544, footnote 4:

"The same principles which justified dismissal of the cause insofar as it sought injunction justified denial of the prayer for a declaratory judgment."

Finally, the fact that the court in the *Pitney* case exercised the dual function of a court in bankruptcy and a court in equity was a mere circumstance, irrelevant to the principle of whether courts may exercise concurrent jurisdiction with the National Railroad Adjustment Board, or whether such disputes must be initially submitted to the Adjustment Board for determination.

In the case at bar the Supreme Court of South Carolina attached importance to the fact that this court, in the *Pitney* case, ordered the district court to retain jurisdiction of the cause for any further proceedings warranted *after* the determination by the Adjustment Board of the disputed question of interpretation of the collective agreement there involved. The South Carolina court concluded that this court had, in fact, thus recognized the concurrent jurisdiction of the Adjustment Board and the courts to interpret rail collective bargaining agreements and had merely held that in the peculiar circumstances of that case the court should exercise equitable discretion to defer its proceedings pending a determination by the National Railroad Adjustment Board. By this interpretation the *Pitney* case is narrowly restricted and the state courts would be left free to exercise a jurisdiction in rail labor disputes which is denied to the Federal courts.

This conclusion, it is submitted, misconstrues the decision in the *Pitney* case. In recognizing the technical questions arising out of disputes involving interpretation of rail collective bargaining agreements, this court pointed out that the National Railroad Adjustment Board was a specialized tribunal exceptionally competent and specifically desig-

nated by Congress to deal with such disputes. Accordingly, this court applied to the Adjustment Board the rule which accords primary jurisdiction to the specialized competence of the Interstate Commerce Commission for determination of technical fact questions peculiarly within the specialized province of the Commission, citing, in the *Pitney* case, the previous decisions of this court in *Great Northern Railway Co. vs. Merchants Elevator Co.*, 259 U.S. 285; *Brown & Sons Lumber Co. vs. Louisville & N. R. Co.*, 299 U.S. 393, and *Mitchell Coal and Coke Co. vs. Pennsylvania R. Co.*, 230 U.S. 247.

This court did not order jurisdiction retained in the *Pitney* case for the purpose of interpreting the collective agreements in dispute, but solely for the purpose of any further judicial proceedings that might be appropriate *following a determination by the Adjustment Board.* The settled principle was followed that in an application of the primary jurisdiction rule the court has discretion to retain jurisdiction pending the administrative proceedings if further judicial action may be appropriate. *Mitchell Coal and Coke Co. vs. Pennsylvania R. Co.*, 230 U.S. 247. On the other hand, if the cause involves matters solely within the primary jurisdiction of a specialized administrative agency and further judicial proceedings are not involved, it is settled that the court should order an immediate dismissal. *Armour & Co. vs. Alton R. Co.*, 7th Cir., 111 F. 2d 913, affirmed in 312 U. S. 195. Accordingly, the retention of jurisdiction in the *Pitney* case did not imply an assertion of concurrent judicial jurisdiction over disputes committed by the Railway Labor Act to the jurisdiction of the Adjustment Board.

C

Congress Created In the National Railroad Adjustment Board A Specialized Tribunal With Primary Jurisdiction of Disputes Involving Interpretation and Application of Rail Collective Bargaining Agreements

The rule is well settled that where Congress, in the exercise of its power over interstate commerce, has enacted a comprehensive statutory system of regulation and has specifically conferred jurisdiction in an administrative agency specialized in the industry, the administrative tribunal has primary jurisdiction over all matters committed to it by the statute.

This rule, while originating in respect to the Interstate Commerce Commission (*Texas & Pacific Railway Co. vs. Abilene Cotton Oil Co.*, 204 U. S. 426), has been held equally applicable to other specialized administrative tribunals including the United States Shipping Board (*United States Navigation Co. vs. Cunard Steamship Co.*, 284 U. S. 474), the National Bituminous Coal Board (*Gray vs. Powell*, 314 U. S. 402; *Stanley v. Peabody Coal Co.*, D. C. Ill., 5 F. Supp. 612), the Secretary of Agriculture pursuant to the Agricultural Marketing Agreement Act (*United States vs. Ruzicka*, 329 U. S. 287), the National Labor Relations Board (*Fur Workers Union, Local No. 72 vs. Fur Workers Union*, App. D. C., 105 F. 2d 1, affirmed in 308 U. S. 522; *Myers vs. Bethlehem Shipbuilding Corp.*, 303 U. S. 41; *Lund vs. Woodenware Workers Union*, D. C. Minn., 19 F. Supp. 607), and the National Railroad Adjustment Board (*Order of Railway Conductors vs. Pitney*, 326 U. S. 561).

The rule of primary jurisdiction or of prior resort to specialized administrative tribunals created by Congress in the exercise of its supreme power over interstate com-

merce has particular application, as shown by the cases cited above, where the inquiry relates to extrinsic evidence of the meaning of technical terms in the industry, and requires consideration of usages and customs peculiar to the trade.

The decision in the *Pitney* case was squarely bottomed on the ground that Congress, in enacting the Railway Labor Act, had intended to exclude judicial consideration of rail labor disputes except in specifically defined instances and had specifically provided in the Adjustment Board an expert tribunal for determination of disputes of the character here presented, this court stating:

> "But Congress has *specifically provided for a tribunal to interpret contracts such as these* in order finally to settle a labor dispute * * * Not only has Congress thus designated an agency *peculiarly competent* to handle the basic question here involved, but as we have indicated in several recent cases in which we had occasion to discuss the history and purpose of the Railway Labor Act, it also intended to leave *a minimum responsibility to the courts.*"

As to the interpretation of the rail collective agreement in the *Pitney* case, this court said:

> "The record shows, however, that interpretation of these contracts involves *more than the mere construction of a 'document' in terms of the ordinary meaning of words and their position.* See *Brown and Sons Lumber Co. v. Louisville & N. R. Co.*, 299 U. S. 393, 396, 57 S. Ct., 265, 266, 81 L. Ed., 301; *Great Northern Ry. Co. v. Merchants Elevator Co.*, 259 U. S. 285, 291, 42 S. Ct., 477, 479, 66 L. Ed., 943. For O. R. C.'s agreements with the railroad must be read in the light of others between

> the railroad and B. R. T. And since all parties seek to support their particular interpretation of these agreements by evidence as to *usage, practice and custom* that too must be taken into account and properly understood. The *factual* question *is intricate and technical.* An agency *especially competent* and *specifically designated* to deal with it has been created by Congress. Under these circumstances the court should exercise equitable discretion to give that agency the first opportunity to pass on the issue. * * * *the court should not have interpreted the contracts for the purposes of finally adjudicating the dispute* between the unions and the railroad."

As this court indicated in the *Pitney* case, by citation of its leading decision in *Great Northern Railway Co. vs. Merchants Elevator Co.*, 259 U. S. 285, this court was considering the question presented to it in the *Great Northern Railway Co.* case, *supra*, wherein this court said:

> "The question argued before us is not whether the *state* courts erred in construing or applying the tariff, *but whether any court had jurisdiction* of the controversy, in view of the fact that the Interstate Commerce Commission had not passed *upon the disputed question of construction.*"

In the *Pitney* case this court, in considering this question, held that the lower courts should not have interpreted the collective bargaining agreements there involved "for the purposes of finally adjudicating the disputes between the unions and the railroad." This holding was, as we have stated, squarely bottomed on the fact that the factual questions involved in interpretation of such agreements are intricate and technical and that Congress has specifically provided an agency in the Adjustment Board especially compe-

tent and specifically designated to deal with such questions. Accordingly, this court held that the Adjustment Board should be given *the first opportunity* to pass on the disputed question of interpretation of the collective agreements involved in that case. This holding was made in spite of the fact that neither party had made any effort at the time of suit to submit their dispute to the Adjustment Board.

In the *Pitney* case this court recognized that Congress, in enacting the Railway Labor Act, was dealing with a highly specialized field. The rules governing pay and working conditions of employees in the rail transportation industry have no similar counterpart in any other industry in the United States. Rail labor agreements are not drawn by attorneys. They are drawn by practical railroad men with a thorough knowledge of railroad operations and in the light of the day to day working conditions of railroad employees. The agreements are terse and couched in terms intended to be understandable to those specialized in a technical industry. Each separate rule has a long history in the industry. Knowledge of long years of custom and practice in the trade is essential to interpretation and application of the rules. Accurate interpretation and application can only be achieved by practical railroad men familiar with rail operations and the precise purpose to be covered by the rule.

With these considerations in mind, Congress created the National Railroad Adjustment Board composed of railroad *representatives of the parties*, expert in rail operation and cognizant of the background and intent of the rules in rail labor agreements. The Board is divided into four divisions and the proceedings of each division are independent of the other. Insofar as practicable, Congress sought to

achieve further specialization within the Divisions of the Board itself. The First Division (composed of ten members, five of whom are selected by the rail carriers of the United States and five by the standard rail labor organizations) specializes in disputes involving only "train and yard-service" employees, these groups generally being referred to as the "operating" crafts. To one familiar with the railroad industry, it is well known that the collective bargaining agreements of the "operating" crafts differ considerably from the agreements negotiated for the various groups of employees known as the "non-operating" crafts whose disputes are heard by the other Divisions of the Adjustment Board.

The Adjustment Board, composed of practical railroad men, was created by Congress to provide a forum to which railroad employees could submit their disputes with the knowledge that a determination would be made by men familiar with the history, background and purposes of the rules involved and fully cognizant of everyday usages and practices in the industry.

The possibility of industrial strife is far less if working men are convinced that their disputes have received a fair and accurate consideration by a board in part composed of their own representatives and expert in the matter under consideration than if they are convinced that decision was not only inaccurate but was made by one wholly unfamiliar and inexperienced in the specific questions presented.

Congress, also being aware that many of the rules contained in the collective agreements of the operating crafts are standard on railroads throughout the United States, was further intent on achieving the uniformity deemed highly desirable in the interpretation and application of these rules by a national board. Thus, at the hearing before

the House Committee on Interstate and Foreign Commerce on H. R. 7650, 73d Cong. 2nd Session at page 47, Mr. Joseph B. Eastman, Federal Coordinator of Transportation stated:

> "I also have the feeling that the national board will have a very distinct advantage, because it can establish certain precedents of general application which should furnish a guide for deciding cases locally. As a matter of fact, the same rules are now interpreted in many different ways throughout the country, and that is one reason why grievances which arise remain unsettled, because there is disagreement as to what the same language means and a great variety of interpretations. If we had one board, nation-wide, setting precedents in these matters, I think the tendency would be to establish guides which would enable a great many of the issues to be settled at home."
>
> "Furthermore, I have the feeling that it is very desirable to have a more uniform settlement of these disputes. These matters that we are now dealing with are grievances. They are not the basic rates of pay or the basic working rules and the interpretation of those rules or grievances which men have, and it doesn't seem to me that it is necessary to have any number of different ways of disposing of those all over the country, and that the national board could soon set certain precedents which would discourage and limit the number of such disputes which would arise, because it would be perfectly clear what the outcome would be if they were referred to the national board."

The foregoing considerations of uniformity in the interpretation of rail collective bargaining agreements and the fact that their interpretation and application depends on a knowledge of technical terminology in a specialized industry and a proper appreciation of the history of the rule and practices, usages and customs thereunder, bring

the National Railroad Adjustment Board squarely within the principles underlying the doctrine of primary jurisdiction as developed in the decisions of this court.

If, however, rail collective bargaining agreements are to be subject to interpretation by the courts of the various states there will be no assurance of uniformity even on the property of a single carrier, as the major transcontinental railroad systems of this country traverse a number of states. Furthermore, it may be said, in all due respect, that trial courts are almost without exception wholly unfamiliar with the complex considerations essential to a proper interpretation and application of a rail collective bargaining agreement.

The instant case aptly illustrates the compelling necessity for a specialized tribunal for determination of disputes involving interpretation and application of such agreements. The trial court attempted to interpret the collective agreement on the basis of voluminous and conflicting testimony as to the meaning of technical terms in the railroad industry such as "straightaway runs," "turn-around runs," "side trips," "lapbacks," "industrial tracks," "turns within turns," "arbitraries," "yard limit boards," and other terms of technical significance in the railroad industry (R. 88, 174-194, 221, 215-220, 228, 247, 249-252, 325-362, 397-398, 409-414). The evidence ranged over a period involving orders and directives issued by the Director-General of railroads in World War I and over the subsequent period of more than a quarter century (R. 172-183, 412-414).

In addition, while respondent's witnesses conceded that each "side trip," or any other trip off of or contrary to the regular "straightaway" assignment, is compensable as an *additional* minimum day of "100 miles or less" under Article 5 of the collective agreement (R. 221, 133-137), the re-

spondent claimed that under established practice and custom, the particular 12½ mile "side trip" here involved was merely a "switching" operation *and a part of* the "straightaway" run, to be compensated on the straight time basis applicable only in figuring overtime, if any, accumulated while *on* (and not *off*) the regular "straightaway" run (Compare: R. 8-9 f. 31-33 with R. 221 f. 882-883 and R. 336 f. 1541).

In attempting to make findings on the evidence as to usage and custom the trial court interspersed its opinion and judgment with generalized findings that the 12½ mile round trip off the side of the assigned "straightaway" run, for which claims were filed, is "substantially the same" as, nor "any different from," and is "similar to," or that there is "nothing exceptional about the length of the track," and that it is "of comparable length" with other "industrial tracks" on which conductors have performed "switching" operations "for many years without demanding or being paid extra compensation" (R. 512-528). These generalized conclusions are asserted in the face of a record which is *barren of evidence of "comparable" or "similar" practices and the sole evidence was that*:

1. The longest side tracks, "industrial" or otherwise, shown to have been regularly "switched" by conductors as a part of a "straightaway" run and regular pay therefor were in fact located *at stations on the assigned "straightaway" run* and were *1800 feet or less in length* — not a round trip of 12½ miles off the side of the "straightaway" run (R. 79-87);

2. Not a single side track of a mile or more in length on the whole 8000 miles of the Southern Railway System was identified *and coupled with any showing whatever* that conductors had regularly traveled it as a part of a

"straightaway" run *without the additional compensation* provided by Article 5(a) or by special agreement — or it was shown that if such trips had been required without additional pay the matter was then in dispute (see references to record at page 10 of this brief).

We have summarized the facts as disclosed by the record in the case at bar for the purpose of demonstrating the intricate and technical factual issues which confronted a court unfamiliar with technical railroad terms and lacking the experience essential to evaluation of customs and usages as applied to rail collective bargaining agreements in a specialized industry. The record as a whole reaffirms the prior pronouncements of this court that rail labor controversies are complicated, involve technical factual issues of usage and custom, and require specialized knowledge and a background of practical experience on the part of the board or tribunal which is to determine them.

It is not without significance that Congress, in creating the National Railroad Adjustment Board provided in Section 3(p) of the Act that the United States District Courts should have jurisdiction, in disputes over which the Board has authority, only for enforcement of its awards.

Thus, Congress specifically indicated its intent that disputes such as this should be presented to the specialized competence of the Adjustment Board *in the first instance* and should thereafter be presented to a court *only in the event* that the carrier refused to comply with an order of the Board and it became necessary to obtain a judicial order of enforcement.

It is true that the United States District Court is not compelled to enter an enforcement order on a patently erroneous award, but it is also true that in considering the award it is required to accept the findings and order of the

Board as "prima facie evidence of the facts therein stated." The United States District Court, therefore, at the outset of its proceedings has the benefit of a specialized determination by an expert tribunal.

In this case, petitioner has been deprived of its right to obtain an authoritative determination by the Adjustment Board in the first instance and then, if necessary, present the matter to a Federal District Court with the knowledge that the court will treat the findings and order of the Board as prima facie evidence of the facts therein stated. Furthermore, the petitioner has been compelled to undergo a long and expensive litigation, which, if repeated as to all of the minor disputes presented by conductors whom it represents on the carriers throughout the United States, would of necessity be very costly, whereas Section 3(p) of the Railway Labor Act provides that in the enforcement suits therein provided petitioner would not be liable, except in certain specific circumstances, for costs at any stage of the proceedings or on appeal, and that if petitioner prevailed a reasonable allowance for attorney fees would be taxed and collected as part of such costs.

We contend that it is apparent from the provisions of the Act that Congress intended that controversies of the character here presented should not be left at the option of either the carrier or the representative of the craft to judicial determination in the first instance. In *Elgin, Joliet & Eastern Railway Co. vs. Burley*, 327 U. S. 661, in referring to the Adjustment Board, this court said:

> "• • • The Board is acquainted with established procedures, customs and usages in the railway labor world. *It is a specialized agency* selected to adjust these controversies."

The presumption may not be indulged that Congress intended to permit such lack of uniformity as would result if rail labor disputes such as this are left for unrestrained judicial determination.

If the contention of respondent be correct, it is not unreasonable to foresee conflicting court decisions in the several states. To each trial court in each such controversy there would be offered and tried anew all of the voluminous and conflicting testimony of the meaning of the technical terms, usages and customs, and the historical background involved in these rules, many of which have their origin under the administration of the railroads by the Director-General of Railroads more than a quarter of a century ago and which are standard rules on the various carriers in the United States. If the contention of the respondent in this case shall prevail, the major objects and purposes which Congress had in mind and declared in the Act will be jeopardized, if not destroyed.

We submit that Congress created the National Railroad Adjustment Board and gave it primary jurisdiction for the very purpose of promoting uniformity of interpretation of the rules and provisions contained in railroad collective bargaining agreements, and with the purpose of creating a specialized tribunal familiar with the technical terms used in such agreements, cognizant of the history and background of the rules, and familiar with the usages and practices followed thereunder in practical railroad operation.

D

Moore vs. Illinois Central Railroad, 312 U. S. 630, Does Not Control The Case At Bar

The respondent, in the courts below and in the brief filed by it in opposition to the petition for certiorari, has relied almost entirely on the decision of this court in *Moore vs. Illinois Central Railroad*, 312 U. S. 630.

In its brief in opposition to the petition for certiorari the respondent broadly urged that this court, in the *Moore* case, held that parties subject to the Railway Labor Act are not "compelled" to present their claims to the Adjustment Board but have the choice of resorting to a court of competent jurisdiction in the first instance; and that the *Moore* case decides that parties subject to the Railway Labor Act need not seek adjustment of their controversies, as provided in the Act, as a prerequisite of the bringing of an action in a state court.

We submit that the contention that the *Moore* case has decided the issue presented here is erroneous.

In *Moore vs. Illinois Central Railroad, supra*, Moore had been employed as a switchman for the Alabama and Vicksburg Railroad Company in its yards at Jackson, Mississippi. On February 15, 1933, Moore, having been absent from work for a year on sick leave, reported for work and was discharged as "an unsatisfactory employee." He was given a hearing before the superintendent of the railroad in which his slowness and irregularity of working, and the fact that in the previous year he had instituted a suit against the company claiming a violation of his seniority rights, were brought up by the railroad as reasons for his

discharge. *Illinois Central Railroad vs. Moore*, 5th Cir., 112 F. 2d 959.

On September 16, 1936, Moore sued the Illinois Central Railroad Company, which had taken over the operation of the Alabama and Vicksburg Railroad, in a court of Mississippi for damages for his discharge. Moore alleged in his complaint that he was a member of the Brotherhood of Railroad Trainmen, which had an agreement in force with the railroad; that the agreement provided that no person should be discharged "without just cause," and that he had been discharged "arbitrarily and without just cause."

Subsequently Moore amended his complaint to claim damages in the sum of $12,000.00 and the defendant railroad removed the case to the United States District Court.

As appears from the opinion in *Moore vs. Illinois Central Railroad Co.*, 5th Cir., 136 F. 2d 412, Moore sought damages "accrued and to accrue in the future," growing out of the alleged breach of contract asserted by him. The Court of Appeals for the Fifth Circuit pointed out that Moore was entitled to bring one suit for all damages accrued and to accrue in the future, and held that his complaint alleged a cause of action for accrued and future damages rather than for damages due and unpaid as of the date of suit, stating (136 F. 2d 412):

> "The demand was for a judgment in the sum of $12,000. The declaration did not allege that Moore would have earned $12,000 within the period from February 15, 1933, (the date of discharge) to September 16, 1936 (the date of suit); indeed, if he had worked every day during that period at the rate of pay alleged, he would have earned less than $9,000. The trial court treated the suit as one to recover all damages sustained by reason of the breach, and stated: 'The rule of damages is that the plaintiff is entitled to recover all damages

that he suffered as a proximate result of the breach of the contract, less any amount that he may have earned for himself'."

Moore did not seek reinstatement with back pay or any other relief which might have been afforded him by submission of his dispute to the National Railroad Adjustment Board. The Adjustment Board had no power to award Moore a judgment for damages, accrued and to accrue in the future. Nevertheless, in answer to his suit the Illinois Central Railroad Company, among other defenses, pleaded that Moore had failed to exhaust his remedies under the Railway Labor Act by submitting his claim for wrongful discharge to the National Railroad Adjustment Board, and for this reason the suit should be abated. This plea was stricken on demurrer by the trial court. On appeal, the Court of Appeals for the Fifth Circuit likewise held it to be an invalid defense on the ground that Adjustment Board remedy (of reinstatement with back pay) did not exclude direct recourse to the courts by Moore for damages for wrongful discharge, accrued and to accrue in the future. The Fifth Circuit, in *Illinois Central Railroad Co. vs. Moore*, 112 F. 2d 959, 966, further stated:

"In case of an arbitrary discharge the union might take the matter to the management, the Adjustment Board, or even to the test of a strike. The *individual* also on his *individual* contract of employment may seek reinstatement with pay through the railroad's officers, or through the Adjustment Board; or he may, before or after pursuing these remedies, *acquiesce in the discharge and ask damages* for a breach of contract in a court of law."

At the time of the submission of the *Moore* case to this

court, in 312 U. S. 630, the railroad still contended that Moore's suit had been prematurely brought because of his failure to exhaust the administrative remedies granted him by the Railway Labor Act. This contention was urged to this court in the face of the fact that, as noted by the Fifth Circuit in the opinion quoted above, the Adjustment Board could at most only have awarded Moore reinstatement and back pay, and could not have awarded him damages accrued and to accrue in the future. Accordingly this court held that the Railway Labor Act did not take away from the courts jurisdiction to determine a suit brought by an individual employee for damages for wrongful discharge.

This court has characterized the *Moore* case as presenting a traditional "common law action for wages." *Order of Railroad Telegraphers vs. Railway Express Agency*, 321 U. S. 342. Clearly the Railway Labor Act in no way superseded the right of an individual employee to prosecute his individual common law action for damages for wrongful discharge. The controversy was one solely between Moore and his former employer, the Illinois Central Railroad.

The situation presented by the *Moore* case is not comparable to that in the case at bar. In the *Moore* case the craft representative was not a party to the litigation; the matter was not being processed either by Moore or by his craft through the procedures provided for by the Act; there was no attempt to procure a judgment to forever terminate further procedures under the Railway Labor Act; and no attempt was being made, as here, to procure a judgment that would be "final and binding" as to all similarly situated. The relief sought by Moore in the exercise of his *individual* right was not in direct conflict with the provisions and procedures provided in the Railway Labor Act.

In the case at bar petitioner was following the pro-

cedures of the Railway Labor Act up to the very instant of suit. The effect of the decree, and, presumably, the object of the suit was to terminate further procedures under the Railway Labor Act. The trial court stated that the decree would be a "final and binding" adjudication which "will finally settle the controversy." More explicit language could not have been used to indicate the design of the trial court to supersede and terminate any further procedures under the Railway Labor Act for the adjustment, settlement and determination of the dispute existing between petitioner and respondent.

The *Moore* case was decided shortly before the decision in *Washington Terminal Co. vs. Boswell*, App. D. C., 124 F. 2d 235, in which the carrier's right to bring a declaratory judgment action to review an award of the National Railroad Adjustment Board was denied. However, by way of dictum, the court in the *Boswell* case, apparently relying on the decision of this court in *Moore vs. Illinois Central Railroad, supra*, commented that prior to submission of a dispute to the Adjustment Board the carrier had the option of pursuing either a judicial remedy or of following its administrative remedy under the Railway Labor Act.

Certiorari was granted by this court in the *Boswell* case and in the course of submission this court directed that certain questions be argued, one of the specific questions being:

> "Whether either party to a dispute *over which the Adjustment Board has authority* is precluded from seeking determination of the dispute by the courts, either before or after submission of the dispute to the Board."

The fact that argument was requested on this question would indicate that this court was not of the opinion that

the question had theretofore been determined by the decision in the *Moore* case. Also, this court carefully limited its question for argument to disputes within the statutory jurisdiction of the Board, which clearly excluded the issue in the *Moore* case as to whether Moore should be awarded accrued and future damages. In any event, the *Boswell* case was affirmed by an equally divided court in 319 U. S. 732. The question presented on reargument was not decided in this case, and the decision does not constitute an authoritative precedent. *Hertz vs. Woodman*, 218 U. S. 205.

The courts below refused to recognize the clear distinction drawn by this court between suits brought by an *individual* employee, as distinguished from suits in which railroad carriers and the organizations representing their employees are opposing parties, and one party or the other is attempting to avoid or interfere with the procedures provided in the Railway Labor Act.

As heretofore noted, this court has uniformly denied judicial jurisdiction in suits between the rail carriers and the railway labor organizations, and has held that in the first instance the parties must be relegated to the administrative remedies and procedures provided in the Act. This court has recognized the propriety of judicial action in rail labor disputes only where an administrative remedy is not available.

As pointed out by this court in *Steele vs. Louisville & N. R. Co.*, 323 U. S. 192, the administrative remedies of the Railway Labor Act may not, in some instances, afford relief to an *individual* employee, either because the administrative agency cannot give the relief sought in a judicial proceeding, or because the individual's claim is opposed by his collective bargaining representative. Accordingly, this court has held that an *individual* employee may, at least in

some circumstances, be permitted to maintain a judicial action because of the absence of an administrative remedy available to him under the Railway Labor Act. See: *Moore vs. Illinois Central Railroad*, 312 U. S. 630; *Steele vs. Louisville & N. R. Co.*, 323 U. S. 192; *Tunstall vs. Brotherhood of Locomotive Firemen and Enginemen*, 323 U. S. 210; *Elgin, Joliet & Eastern Railway Co. vs. Burley*, 325 U. S. 711, 327 U. S. 661.

It is respectfully submitted that this court has drawn a clear distinction between suits brought by an *individual* employee to which the administrative remedies of the Railway Labor Act may not be available or without power to grant the relief sought, and suits involving the rail carriers and representatives of their employees where the effect of the suit will be to by-pass the administrative remedies of the Railway Labor Act and interfere with the procedures which Congress provided in the Act for the settlement, adjustment and determination of the specific matter in controversy.

It is of no consequence, as has been emphasized by the respondent, that the *Moore* case referred to the fact that there is no legal compulsion on parties subject to the Railway Labor Act to submit their disputes to the Adjustment Board. In the case at bar the respondent seeks by a judicial decree to relieve itself of its mandatory legal compulsion under the Railway Labor Act to exert "every reasonable effort" to negotiate a settlement of the dispute here presented, and seeks further to prevent petitioner from obtaining an authoritative determination of the dispute by the National Railroad Adjustment Board, or avail itself of the further procedures provided in the Act.

The statement of this court in *Moore vs. Illinois Central Railroad, supra*, that the machinery provided in the Railway Labor Act for the settlement of disputes was not

"based on a philosophy of legal compulsion" in no sense supports the respondent's contention that this court intended to interpret the Railway Labor Act as permitting state courts to assume jurisdiction in such disputes. This court had no difficulty in finding a lack of judicial jurisdiction to determine matters as to which the Railway Labor Act provided for settlement by recourse to the *voluntary* implements of mediation, conciliation and arbitration. *General Committee, etc. vs. M.-K.-T. R. Co.*, 320 U. S. 323, 332, 337; *Brotherhood of Railroad Trainmen vs. Toledo, Peoria & Western Railroad Co.*, 321 U. S. 50. And, in sustaining judicial intervention in *Steele vs. Louisville & Nashville R. Co.*, 323 U. S. 192, this court specifically pointed out, *as a ground of jurisdiction*, that the plaintiff in that case did *not* have available to him the *voluntary* remedies of the Railway Labor Act, saying (page 205):

> "The question here presented is not one * * * *restricted by the Act to voluntary settlement* by recourse to the traditional implements of mediation, conciliation and arbitration. *General Committee v. M.-K.-T. R. Co., supra*, 332, 337."

Likewise, in *Mitchell Coal & Coke Co. vs. Pennsylvania R. Co.*, 230 U. S. 247, the Interstate Commerce Act before the court in that case, by its specific terms, granted the plaintiff the *option* of the alternative remedies of a suit in court or an administrative proceeding before the Interstate Commerce Commission. As observed by this court in *United States Navigation Co. vs. Cunard Steamship Co.*, 284 U. S. 474, this court held that matters committed to the Interstate Commerce Commission were within the exclusive primary jurisdiction of the Commission, and this holding was made:

"* * * in the face of a clause in Section 22 of the Interstate Commerce Act, that nothing therein contained should in any way abridge or alter existing common law or statutory remedies, but that the provisions of the act were in addition to such remedies."

The decisions of this court cited above conclusively demonstrate, we believe, the fact that the plaintiff's argument, based, as it is, on a lack of "legal compulsion" to be found in the Railway Labor Act, is entirely irrelevant to the issue here under consideration. In determining whether Congress had vested an exclusive primary jurisdiction in a specialized administrative tribunal, this court has not heretofore sought to determine whether the statute contained language of legal compulsion. On the contrary, as this court clearly stated in *United States Navigation Company vs. Cunard Steamship Company, supra*, the controlling factor was whether it appeared from the scope and evident purpose of the Act that Congress intended to confer an exclusive primary jurisdiction in an administrative body especially trained and experienced in the intricate and technical facts and usages of the matters to be submitted to it.

It is respectfully submitted that the scope and evident purpose of the Railway Labor Act is clearly demonstrative of the conclusion that Congress intended that disputes of the nature here involved should be submitted, at least in the first instance, to the National Railroad Adjustment Board for hearing and determination. The Adjustment Board is but one of the procedures provided by Congress in the Railway Labor Act for the adjustment and settlement of labor controversies. Clearly, there is no merit in the respondent's contention that Congress intended to permit courts to intervene and absorb the jurisdiction of the Adjustment Board,

but at the same time intended to preclude judicial intervention as to the jurisdiction of the Mediation Board.

We respectfully submit that the decision of this court in *Moore vs. Illinois Central Railroad, supra*, lends no aid to the respondent's contention that state courts may assume jurisdiction to adjudicate controversies of the character here submitted.

E

The Final Decree Of The State Court Is In Direct Conflict With the Mandatory Provisions Of The Railway Labor Act As To Collective Bargaining

At the time of the commencement of this action and up to and including the date of trial thereof, the dispute between the petitioner and respondent concerning interpretation and application of the collective agreement was still pending (R. 169). Various conductors of the craft were still filing claims for additional pay for the Pregnall-Ancor Plant movement and such claims were filed both before and after commencement of the suit (R. 195). Respondent admitted that the dispute arising out of these claims was still in the process of negotiation (R. 211).

The trial court, in commenting on the fact that the controversy was still pending at the time of trial, remarked to respondent's counsel (R. 169):

> "Mr. Barnwell, the controversy *is what we are trying to settle here now*, isn't it?"

The trial court in its final decree further stated that (R. 515):

"* * * this court is in a position now to make *a binding and final* declaration *that will settle the controversy* between plaintiff and defendant."

In its final decree the trial court ordered and declared that the movements on the private track serving the plant of the Ancor Corporation be held to be "industrial switching" and that such movements "constitute a part of the service trips of the conductors of the local trains between Charleston and Branchville"; that conductors are not entitled "to an additional day's pay or any other additional compensation" apart from the pay for their regular service trip from Charleston to Branchville; that respondent has fully paid these local freight conductors for their services in the operations at Pregnall; and that the respondent is under no legal liability to satisfy "the claims *or any similar claims* which have been made *or may be made* by defendant (petitioner) for extra compensation for conductors of local freight trains for performing industrial switching on tracks serving the Ancor Corporation at Pregnall, South Carolina" (R. 527-528).

This court has held that collective bargaining under the Railway Labor Act is not only a mandatory but a continuous process. The final decree of the trial court chopped short and exonerated the respondent from any further duty "to exert every reasonable effort" to settle this and all "similar" disputes which may arise in the future (Section 2(1), First of the Railway Labor Act). *Virginia Railway Co. vs. System Federation*, 300 U. S. 515, 545, 553-554.

In this case petitioner has been advised by a "final and binding" judicial decree that the dispute has been finally settled *by the court* and that further efforts on the part of the petitioner to perform its statutory function to obtain a settlement of the dispute by negotiation must be aban-

doned not only in respect to this dispute but in respect to all "similar" disputes that may arise in the future. The decree could not have more effectively cut off collective bargaining as to such disputes and in respect to the craft as a whole had it contained an injunctive order.

It is no answer to say, as respondent does in its brief in opposition to the petition for certiorari, that the trial court found that "The claims were appealed by the defendant (petitioner) to the highest officer of the plaintiff authorized to handle such claims and were formally rejected" (R. 515).

The petitioner was not bound to desist from further efforts to settle the dispute by negotiation merely by reason of the fact that negotiations had been carried to "the highest operating officer" of the carrier from whom a "formal" rejection had emanated. As stated above, this court has recognized collective bargaining as a continuing process. Petitioner may well have had reason to believe that further conferences and negotiations with the highest operating officer of the carrier might ultimately lead to an amicable adjustment and settlement of the controversy in spite of the initial rejection, and that as suggested by petitioner, Article 5 of the collective agreement might be amended in regard to this operation so as to provide a special rate of compensation for the Pregnall movement (R. 318, 234-239, 257-258, 336-337). Petitioner, therefor, was entitled to continue its negotiations for adjustment of the controversy.

Certainly the respondent did not relieve itself of its further and continuing duty of collective bargaining merely by forwarding to petitioner a formal declination of payment of these claims from its "highest operating officer." Nor does the fact that the dispute had reached the highest

operating officer, and payment of the claims had been declined, confer jurisdiction on the state court for *settlement* of the controversy.

We desire to call the attention of the court to the fact that this petitioner, in responding to the complaint of the respondent in this cause, did not at any time join in the respondent's request that the court enter a declaratory judgment on the merits of the case, and at all times throughout the proceedings in the courts below asserted its position that the cause should be dismissed and the dispute be settled, adjusted, or determined through the remedies and procedures provided in the Railway Labor Act.

It is respectfully submitted that the decree in the case at bar directly interfered with collective bargaining under the Railway Labor Act and must be reversed on this ground alone. It is further submitted that Congress did not intend or contemplate that after disputes had reached "the highest operating officer" that parties subject to the Railway Labor Act would immediately thereafter be permitted to engage in a race as between submission of the dispute to a court or to the Adjustment Board, or that either party could obtain a judicial decree which would relieve it of its mandatory duty of collective bargaining under the Act.

F

The Railway Labor Act Was Intended To Embrace All Rail Labor Disputes And Provide The Exclusive Procedures In Connection Therewith

In the various decisions of this court the history of rail labor legislation, culminating in the Railway Labor

Act and the procedures therein provided for, have been referred to extensively.[3]

The present Act represents a long experience in rail labor disputes. The Act and the machinery and procedures therein provided for have played a substantial part in preventing interruption of interstate commerce by the use of economic force on a national or regional basis.

The petitioner contends that Congress, in the adoption of the Act, intended to and did embrace within the provisions of the Act the entire field of rail labor disputes and created specialized boards, methods and procedures to be followed in the handling and the progression of such disputes.

The five major objects and general purposes of the Act are set forth in Section 2 (1) of the Act. These general purposes are all-inclusive. The objects are to avoid interruption to commerce; to forbid any limitation upon freedom of association; to provide for the complete independence of self-organization; to provide for the prompt and orderly settlement of all disputes "concerning rates of pay, rules or working conditions;" and "to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of

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[3] See, also: Garrison, *The National Railroad Adjustment Board: A Unique Administrative Agency*, 1946 Yale Law Journal 567; Spencer, *The National Railroad Adjustment Board*; Fisher, *Industrial Disputes and Federal Legislation*; Johnson, *Government Regulation of Transportation*; Wolf, *Railroad Labor Board*; Alderman, *The History of Federal Legislation*; *Hearings Before The Committee On Interstate Commerce*, United States Senate On S. 3266; *Hearings Before The Committee On Interstate and Foreign Commerce*, House of Representatives on H. R. 7650; *Inquiry Of The Attorney General's Committee On Administrative Procedure Relating To The National Railroad Adjustment Board.*

agreements covering rates of pay, rules, or working conditions."

The further provisions of Section 2 of the Act impose the affirmative duty upon carriers and employees alike to exert every effort to make and maintain agreements as well as to settle all disputes, "whether arising out of the application of such agreements or otherwise." It directs that all disputes shall be considered by the carrier and the designated representatives of the employees; makes provision for the rights of individual employees, craft representation, and by Section 2, Sixth, requires that it shall be the duty of the designated representatives of both the carrier and the employees, to meet within ten days after notice to confer with respect to any dispute "arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions, * * *."

Prohibitions are provided against changing rates of pay, rules or working conditions except in the manner prescribed in the Act, and the Act further prescribes the method, means and the agency for the determination of the representatives of the crafts of employees involved.

Section 3 of the Act creates the National Railroad Adjustment Board, the manner and method of the selection of the members thereof by the carriers and the representatives of the labor organizations, and provides that the compensation of the members thus selected shall be paid by the party such member is to represent. This Section prescribes the jurisdiction of the four divisions of the Adjustment Board thus created. Paragraph (i) of Section 3 of the Act provides:

"(i) The disputes between an employee or group of employees and a carrier or carriers growing out of

grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, *shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes*, but, failing to reach an adjustment *in this manner*, the disputes may be referred by petition of the parties or by *either* party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The procedures provided in the Act as a whole impose a duty of meeting, bargaining and negotiating in an attempt to adjust grievances or disputes growing out of the interpretation or application of agreements "in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes, * * *." This is a mandatory duty upon carrier and representatives of employees alike. Having thus progressed the matter from its inception with the local officials through, to and including the chief operating officer of the carrier, the Act further provides that "failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties" to the Adjustment Board.

It is true that there is no legal compulsion upon either the carrier or the representative of the employees to present the matter to the Adjustment Board. The duty is affirmative and mandatory, however, to meet, confer and attempt to adjust the dispute through the chief operating officer of the carrier. Neither party may by-pass the duty of meeting and negotiating before proceeding to the Adjustment Board. Nor is it contemplated that, before exhausting these duties of holding conferences and bargain-

ing, either party may seek to bring about a determination of the dispute through the exercise of economic force, court action or invoke the services of any other agency otherwise provided for in the Act.

The clear provisions of the Act contemplate that if the dispute is not settled by meeting and negotiating, up to and including the chief operating officer of the carrier designated to handle such disputes, that either party may then submit the matter to the appropriate division of the Adjustment Board, if the dispute is one properly to be determined by it.

By the provisions of Section 3 of the Act, Congress not only created a specialized board or agency peculiarly competent to handle the questions, but prescribed the method and manner thereof in a *practical* and *economical* way. The submission to the Adjustment Board may be made by either party with a full statement of the facts and all supporting data. Days, weeks or perhaps months of oral testimony are not envisioned by this procedure. Rather, merely a full statement of facts to the specialized board and agency, is all that is necessary or required.

By the provisions of Section 3 (m), the awards of the Board are to be in writing and furnished to each party, and such awards are expressly made

> "final and binding upon both parties to the dispute, except insofar as they shall contain a money award."

Not only did Congress create the specialized board and provide for the method and manner of the submission of the dispute in a practical, economic and efficient way, not imposing upon either party the necessity or requirement of extended hearings and testimony, technical rules of evidence, practice and procedure and the expense of counsel

necessarily required in court matters, but in addition it prescribed a method and means of judicial enforcement of the awards made by the Board.

Section 3(p) of the Act confers jurisdiction upon any District Court of the United States, in any District in which the carrier resides or maintains an office or through which it operates, for the enforcement of an award. In such a proceeding it is further expressly provided:

> "* * * the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, * * *"

thus recognizing the weight and effect to be given to the award of the specialized administrative agency created for the purpose of hearing and determining such disputes in the first instance. The further provisions of this Section, providing that the petitioner seeking to enforce the award shall not be liable for costs and that if a petitioner shall prevail that a reasonable attorney fee shall be allowed and taxed, may not be ignored. These procedures were designed and created by Congress as a method and means of accomplishing the major objects and purposes of the Act. They belie any thought or suggestion that it was intended by Congress that disputes of the character to be heard and determined by the Adjustment Board should, at the *whim* of either the carrier or the employees or their representatives, be relegated to the ordinary judicial processes in the state or federal courts.

The further provisions of Section 3 prescribing a uniform period of limitation within which actions based on awards may be instituted, and imposing upon the Mediation Board the duty of making annual reports showing "in detail all cases heard, all action taken," and other data of the

Adjustment Board support the all-inclusive nature of this Act.

The provisions of Section 3, granting the Adjustment Board power and authority to establish regional adjustment boards, and the provision providing that an individual carrier, system or group of carriers or any class or classes of its employees shall not, by any provision of the Act, be prevented from *mutually* agreeing to the establishment of regional boards of adjustment, all highlight and emphasize the intent of Congress in accord with petitioner's contentions made herein.

The provisions of the Act creating the National Mediation Board, its functions and duties, and providing that either the carrier or employees may invoke the services of the Board with respect to disputes as therein expressly provided, and "any other dispute not referable to the National Railroad Adjustment Board * * *," further demonstrate the all-inclusive scope of the Act.

Provisions are further made for arbitration in Section 7 of the Act, the method of selecting the arbitrators, the handling of their duties, the production of books and records, the filing of the award in the appropriate office of the Clerk of the District Court or Circuit Court of Appeals of United States, and the jurisdiction of the courts with respect to such arbitration board awards further bear out the intent of Congress to set up. by the provisions of the Act as a whole, all machinery, agencies and boards to include all disputes in rail labor matters. It is significant that, with respect to the provisions for arbitration, it is provided:

> "That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise."

There is no provision of the Act providing that either party may by-pass its provisions and invoke the jurisdiction of state courts, as was done in the case at bar. Respondent's attempt to read into the Act such a provision by judicial interpretation is repugnant to its every provision and its stated objects and purposes.

Section 10 of the Act further provides that:

> "If a dispute between a carrier and its employees be not adjusted *under the foregoing provisions of this Act* and should, in the judgment of the Mediation Board, threaten substantially to interrupt interstate commerce * * *"

an emergency board may be appointed by the President and for the further procedure of such a board, and for a stay for a period of thirty days following the report of the board of any change in the existing status and working conditions, unless made by agreement by the parties to the controversy.

A more comprehensive and all-inclusive Act to achieve the objects and purposes sought can hardly be imagined. The whole field of rail labor disputes in the original making and negotiating of agreements and in the settlement of disputes arising therefrom are encompassed and provided for.

The finding of the trial court that the Adjustment Board procedure provided in the Railway Labor Act "is not speedy and adequate," has no support either as a conclusion of law or as a finding of fact. Certainly the trial court had no authority to determine the claimed inadequacy of the Adjustment Board procedure as a matter of law, and its finding of lack of speed on the part of the Board, based on the oral testimony of respondent's witnesses that a decision of the Board could not be obtained for several years, does

not establish that the Board is less speedy than the judicial processes of courts. In any event, delay in an administrative remedy would not warrant judicial relief. *Utah Fuel Co. vs. National Bituminous Coal Commission*, App. D. C., 101 F. 2d 426.

We respectfully submit that the asserted "inadequacy" of the Adjustment Board remedy would not constitute a valid ground in law for the conclusion of the courts below that, as a matter of judicial discretion, this dispute might be adjudicated on its merits.

We further submit that on whatever ground the decree of the courts below is based it inevitably conflicts with the Railway Labor Act and deprives this petitioner of its rights, privileges and immunities thereunder, and for these reasons must be held in law as beyond the authority of a state court.

The issues presented to this court are important not only to the parties here involved but to all rail labor disputes between all interstate carriers and their employees throughout the United States. In the First Division of the Adjustment Board alone, involving only the operating crafts, more than 1,000 disputes are decided each year (see annual reports of the National Mediation Board). The determination of a comparable number of lawsuits instituted annually in the different states could result in chaos in the interpretation of collective agreements, impose tremendous financial burdens upon the parties and encourage and invite the use of economic force as the only remaining practical method of handling such disputes.

We respectfully submit that in considering and in determining the issues presented in the case at bar the Railway Labor Act must be considered as a whole. When this is done the conclusion must result that controversies of the character here involved must follow the procedures provided by the Act; that Congress has pre-empted the field and that

the South Carolina Declaratory Judgment Act, as here interpreted and applied, is in conflict with the Railway Labor Act; that the state courts of South Carolina were without jurisdiction; that the Adjustment Board must be given the first opportunity to hear and determine disputes such as this; that the decree directly interferes with and cuts off collective bargaining; and that the judgment of the courts below should and ought to be adjudged void, of no force and effect, and be vacated and set aside.

CONCLUSION

It is respectfully submitted that for each and all the reasons herein urged, the final judgment rendered by the Supreme Court of South Carolina deprives petitioner of rights, privileges and immunities under the Railway Labor Act, particularly its right of collective bargaining concerning this and similar disputes which may arise in the future, its right to have this and similar disputes determined by the National Railroad Adjustment Board and its right to avail itself of the further procedures provided in the Railway Labor Act. It is further submitted that the Declaratory Judgment Act of South Carolina, as interpreted and applied, is to this extent repugnant to the Railway Labor Act and that the judgment below is of no effect and is void.

Under the Railway Labor Act petitioner is entitled to immunity from suits of the character here involved and is entitled to have controversies such as this adjusted, settled and determined by the process and procedures provided by

Congress in the Act. A reversal of the decree below will accomplish this object.

Respectfully submitted,

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APPENDIX

The following unreported decisions are referred to in the brief:

"UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ATLANTIC COAST LINE RAILROAD COMPANY, a corporation, *Plaintiff*, vs. BROTHERHOOD OF RAILROAD TRAINMEN, et al, *Defendants*. BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN, *Intervenor*.	# 13335 J Civil

ORDER

This cause having been submitted upon the record and supporting affidavits, and the Court having heard the argument of the respective parties, it is upon consideration hereof:

ORDERED AND ADJUDGED:

1. The motion of Brotherhood of Locomotive Firemen and Enginemen (filed March 9, 1948) for leave to intervene, is granted.

2. Plaintiff's prayer for declaratory judgment is denied. The cause is retained on the docket in order to afford the parties an opportunity to apply to the Railway Adjustment Board for an interpretation of the labor contracts in-

volved, after which the Court will consider what, if any, duty rests upon it with respect to the controversy.

DONE AND ORDERED at Jacksonville, Florida, March 30, 1948

[s] Louie W. Strum
U. S. District Judge.

MEMORANDUM

The record presents a typical controversy between a Railway and its employees involving the interpretation of labor contracts regulating working conditions.

Under the Railway Labor Act, 45 U.S.C.A. 153, First (i), and in the circumstances here presented, the interpretation of those contracts is initially a function of the Railway Adjustment Board, not the Courts. *Order of Railway Conductors v. Pitney*, 326 U. S. 591, 90 L. Ed. 318; *Order of Railroad Telegraphers v. New Orleans*, 156 Fed. (2) 1; *MK&T R. Co. v. Randolph*, 164 Fed. (2) 4. The same would be true even though the Brotherhood of Locomotive Firemen and Enginemen had not intervened.

[s] Louie W. Strum
U. S. District Judge"

"IN THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DIVISION OF THE NORTHERN DISTRICT OF ALABAMA

Seaboard Air Line Railroad Company, a corporation, *Plaintiff* vs. Brotherhood of Railroad Trainmen, et al, *Defendants*	Civil Action No. 6093

This cause, coming on to be heard, was submitted upon motion of several named defendants to dismiss the complaint upon the ground inter alia that the complaint presents no justifiable controversy.

The Court has considered the most able oral arguments of counsel but is persuaded that the motion to dismiss must be granted upon the authority of *Brotherhood of Railroad Trainmen vs. Texas and Pacific Ry. Co.*, 159 F. (2d) 822, reaffirmed in *Hampton, et al, v. Thompson, et al*, 171 F. (2d) 535, and *United States ex rel Deavers v. Missouri-Kansas and Texas RR. Co.*, 171 F. (2d) 961.

No point having been made here that this court should stay the proceedings in this suit until plaintiff has been afforded a reasonable opportunity to present the controversies or grievances described in the complaint to the National Railroad Adjustment Board for its interpretation and decision, it is accordingly ORDERED, ADJUDGED AND DECREED that this action be and the same is hereby dismissed at the costs of the plaintiff, for which execution may issue.

Done, this the 25th day of March, 1949.

(s) SEYBOURN H. LYNNE
UNITED STATES DISTRICT JUDGE"